Release from Prison

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Parole is often misunderstood, and the general public confuses it with probation. Parole and probation both involve the supervision of offenders in the community. Probation, however, is almost always an alternative to incarceration, whereas offenders on parole have been released after serving prison terms. *Parole* is a French word, meaning "word," as in giving one's word of honor or promise. It has come to mean an inmate's promise to behave in a law-abiding manner and according to certain rules in exchange for release. Parole is part of the general nineteenth-century trend in criminology that progressed from punishment to reformation.

Early European Foundations and the Growth of Parole

Chief credit for developing the early parole system is given to Captain Alexander Maconochie (1787–1860). Before Maconochie, prison sentences carried no element of positive conditioning. Inmates worked for the state or as indentured servants and were released upon the completion of a fixed sentence. They were also subjected to harsh physical punishment.

Maconochie found this system ineffective and reprehensible. He criticized definite prison terms and developed a system of rewards for good conduct, labor, and study. Through his classification procedure called the "mark system," prisoners could progress through stages of increasing responsibility and ultimately gain freedom. The five stages were: (1) strict imprisonment, (2) labor on government chain gangs, (3) freedom within a limited area, (4) a ticket of leave on parole resulting in a conditional pardon, and (5) full restoration of liberty. The exact sentence was always "indeterminate": dependent upon the completion of a defined amount of work and the prisoner's behavior during confinement. In that sense, inmates could actively participate in the termination of their sentences.

From 1840 to 1844, Maconochie transformed the Norfolk Island penal settlement off the coast of Australia – previously one of the most brutal convict settlements – into a controlled, stable, and productive environment. Inmates released from his prison achieved such success that they came to be called "Maconochie's Gentlemen" (Morris 2002).

Sir Walter Crofton implemented Maconochie's mark system when he became the administrator of the Irish Prison System in 1854. After instituting strict imprisonment, Crofton began transferring offenders to "intermediate prisons" where they could accumulate "marks" based on work, behavior, and educational improvement. Eventually they were given tickets of leave and released on parole supervision.

Most significant in terms of Crofton's historical contribution, he required that parolees submit monthly reports to the police. In Dublin, a special civilian inspector helped those released find jobs, visited them periodically, and supervised their activities. The modern-day parole officer had thus been born.

The Genesis of American Discretionary Parole

By 1865, American penal reformers were well aware of the reforms achieved in the European prison systems. At the Cincinnati meeting of the National Prison Association in 1870, specific references to the Irish system were incorporated into the "Declaration of Principles," along with other such reforms as indeterminate sentencing and the mark system. Because of Crofton's experiment, many Americans referred to parole as "the Irish system."

Indeterminate sentencing and discretionary parole reflected the tenor of the times: beliefs that criminals could be reformed and every prisoner's treatment should be individualized. As a

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result, they spread rapidly throughout the United States. In 1907, New York became the first state to formally adopt all of the components of a discretionary parole system: indeterminate sentences, a system for granting release, post-release supervision, and specific criteria for parole revocation. By 1927, only three states (Florida, Mississippi, and Virginia) were without discretionary parole systems, and by 1942, all states and the federal government utilized discretionary parole (Petersilia 2003).

Discretionary Parole Becomes the Dominant Method of Prison Release in America

Parole, it seemed, made perfect sense during much of the twentieth century. First, it was believed to contribute to prisoner reform by encouraging participation in rehabilitation programs. Second, the power to grant parole was thought to provide prison officials with a tool for maintaining institutional control and discipline; the prospect of a reduced sentence encouraged inmates to behave well. Finally, release on parole was critical as a "back end" solution to prison crowding.

The rehabilitation ideal, as it came to be known, affected all of corrections well into the 1960s and gained acceptance for the belief that the purpose of incarceration and parole was to change the offender's behavior rather than simply to punish. Rhine et al. (1991) note that, as the rehabilitative ideal evolved, indeterminate sentencing, in tandem with parole, acquired a newfound legitimacy. It also gave credibility and purpose to parole boards, which were supposed to be comprised of "experts" in behavioral change; it was their responsibility to discern that moment during confinement when the offender was rehabilitated and thus suitable for release.

Parole boards, usually made up of political appointees, had broad discretion to determine when an offender was ready for release – a decision limited only by the constraints of the maximum sentence imposed by the judge. Parole boards – usually composed of no more than 10 people – also had the authority to rescind established parole dates, issue warrants and subpoenas, set conditions of supervision, restore offenders' civil rights, and grant final discharges. In most states, they also ordered the payment of restitution or supervision fees as a condition of release. In the early years, there were few standards governing parole decisions, and such rules were not made public.

In *Conscience and Convenience*, David Rothman (1980) reports that in the early twentieth century, parole boards primarily considered the seriousness of the crime in determining whether to release an inmate. However, there was no consensus on what constituted a serious crime. Instead, "each member made his own decisions. The judgments were personal and therefore not subject to debate or reconsideration." These personal preferences often resulted in unwarranted sentencing disparities or racial and gender bias. As has been observed, "no other part of the criminal justice system concentrates such power in the hands of so few" (Rhine et al. 1991: 32).

By the mid-1950s, indeterminate sentencing coupled with parole release was the dominant sentencing structure in every state, and by the late 1970s more than 70% of all released inmates were released as a result of a parole board discretionary decision. The percentage of US prisoners released via discretionary parole rose from 44% in 1940 to a high of 72% in 1977. Indeterminate sentencing coupled with parole release was a matter of absolute routine and good correctional practice for most of the twentieth century.

Challenges to the Ideological Underpinnings of Discretionary Parole

The pillars of American corrections – indeterminate sentencing coupled with parole release, for the purposes of offender rehabilitation – came under severe attack and basically collapsed during the late 1970s and early 1980s. This period in penology has been well documented elsewhere and will not be repeated here.

Attacks on indeterminate sentencing and parole release centered on three major criticisms. First, there was little scientific evidence that parole release and supervision reduced subsequent recidivism. In 1974, Robert Martinson and his colleagues published the now-famous review of the effectiveness of correctional treatment and concluded: "With few and isolated exceptions, the

rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism" (Martinson 1974: 22). Of the 289 studies they reviewed, just 25 (9%) pertained to parole, and yet their summary was interpreted to mean that parole supervision (and all correctional rehabilitation programs) was not effective. Martinson's study is often credited with giving rehabilitation the coup de grace. Once rehabilitation could not be justified by science, there was nothing to support the "readiness for release" idea, and, therefore, there was no role for parole boards or indeterminate sentencing.

Second, parole and indeterminate sentencing were challenged on moral grounds as unjust and inhumane, especially when imposed on unwilling participants. Prisoners argued that not knowing their release dates held them in "suspended animation" and contributed another form of pain stemming from imprisonment.

Third, critics challenged indeterminate sentencing due to the uncontrolled discretion it permitted parole board members. Parole decisions were often inconsistent due to factors stemming from human nature. For instance, one recent study indicates that experienced judges in Israel responsible for making parole decisions were significantly impacted by the amount of time they had gone without a break. Inmates appearing early in the morning had approximately a 70% chance of being paroled, as compared to a 10% grant rate for those inmates appearing at the very end of the day (Danziger et al. 2011). The possibility of such inconsistencies due to human nature – even without any nefarious intent – deeply troubled critics of discretionary parole.

However, there was perhaps even greater concern that the personal biases of parole board members resulted in sentencing disparities based on race, class, or gender. This worry was especially profound given the lack of outside scrutiny regarding parole decisions. The scholarship on this issue has produced mixed results. Some researchers have failed to find any significant association between race and parole release (Morgan and Smith 2008). Others, however, have suggested that minority offenders are less likely to be paroled (Proctor 1999).

One critical aspect of this issue is that there are racial disparities in other parts of the criminal justice system – such as arrest rates – that may serve as a legitimate basis for denying an inmate parole. It has been documented, for instance, that African Americans are not more likely to use illegal substances, yet are more likely to be arrested for such behavior (NAACP 2015). This is due to a number of factors, such as the nature of drug transactions in different communities as well as efforts by the police to focus on certain communities and neighborhoods. And yet it is perfectly reasonable for parole board members to look at an inmate's criminal record in assessing his fitness for parole. As a result, it is possible for there to be racial disparities in release decisions even when the parole board members do not possess any racial biases. And it is important to note that discretionary parole is not the sole source of discretion within the criminal justice system. There are many different actors – prosecutors, police, and judges – who exercise a great deal of discretion. As a result, it is questionable whether parole boards significantly increase the amount of racial, or other, disparities in sentencing, especially those due to personal biases. Still, parole board members, typically unelected officials working behind closed doors, became viewed with great skepticism.

It seemed as if no one liked indeterminate sentencing and parole in the 1970s. The time was ripe for change. Crime control advocates denounced parole supervision as being largely nominal and ineffective; social welfare advocates decried the lack of meaningful and useful rehabilitation programs. Several scholars, including James Q. Wilson, Andrew von Hirsch, Norval Morris, and David Fogel, began to advocate alternative sentencing proposals.

Wilson (1975) argued that if there were no scientific basis for determining the probability of rehabilitation, the philosophical rationale for making it the chief goal of sentencing should be abandoned. He argued for a revival of interest in the deterrence and incapacitation functions of the criminal justice system. He wrote: "Wicked people exist. Nothing avails except to set them apart from innocent people" (1975: 248). He urged the abandonment of rehabilitation as a major purpose of corrections:

> Instead we could view the correctional system as having a very different function – to isolate and to punish. That statement may strike many readers as

> cruel, even barbaric. It is not. It is merely recognition that society must be able to protect itself from dangerous offenders. It is also a frank admission that society really does not know how to do much else. (1975: 173)

Von Hirsch (1976) provided a seemingly neutral ideological substitute for rehabilitation. He argued that the discredited rehabilitation model should be replaced with a simple non-utilitarian notion that sentencing sanctions should reflect the social harm caused by the misconduct. Indeterminacy and parole should be replaced with a specific penalty for a specific offense. He believed that all persons committing the same crimes "deserve" to be sentenced to conditions that are similar in both type and duration, and that individual traits such as rehabilitation or the potential for recidivism should be irrelevant to sentencing and parole decisions. He proposed abolishing parole and adopting a system of "just deserts" sentencing where similarly situated criminal conduct would be punished similarly.

Fogel (1975) advocated for a "justice model" of prisons and parole, where inmates would be given opportunities to volunteer for rehabilitation programs, but participation would not be required. He criticized the unbridled discretion exercised by correctional officials, particularly parole boards, under the guise of "treatment." He recommended a return to flat time/determinate sentencing and the elimination of parole boards. He also advocated abolishing parole's surveillance function and turning it over to law enforcement.

The Decline of Discretionary Parole

Liberals and conservatives alike endorsed the proposals advanced by scholars such as Wilson, von Hirsch, Morris, and Fogel. The political left was concerned about excessive discretion that permitted vastly different sentences in presumably similar cases and the political right was concerned about the leniency of parole boards. As Reitz (2001: 228) wrote, once the belief in rehabilitation lost force, "all the virtues of indeterminacy could be recast as vices." A political coalition resulted, and soon incapacitation and "just deserts" replaced rehabilitation as the primary goal of American prisons. Even rank-and-file Americans abandoned their faith in rehabilitation. In 1970, a Harris poll found that 73% of Americans thought that the primary purpose of prison should be rehabilitation. By 1995, only 26% did.

With that changed focus, calls to "abolish parole" were heard in state after state. In 1976, Maine became the first state to eliminate discretionary parole. The following year, California and Indiana followed suit, abolishing discretionary parole release from prison in favor of determinate sentencing schemes. California's 1977 Determinate Sentencing Law also amended the state's penal code to declare that the ultimate goal of imprisonment was "punishment" rather than "rehabilitation."

Hughes et al. (2001) report that 16 states have abolished discretionary release from prison by a parole board for all offenders. Another five states have abolished discretionary parole for certain violent offenses or other felony crimes. Additionally, in 21 states parole authorities operate under what might be called a sundown provision, in that they have discretion over a small and decreasing parole-eligible population. Today, just 16 states have given their parole boards full authority to release inmates through a discretionary process. Likewise, at the federal level, the Comprehensive Crime Control Act of 1984 created the US Sentencing Commission. That legislation abolished the US Parole Commission, and discretionary parole was phased out of the federal criminal justice system in 1997. Federal inmates, while no longer eligible for parole, are now required to serve a defined term of "supervised release" after leaving prison.

As shown in Figure 1, discretionary parole boards released just 18% of state prisoners in 2009 and 2010. This is the lowest figure since the federal government began compiling the data and represents a dramatic decline from the 72% in 1977. From 2011 to 2013, however, the number of inmates released discretionarily increased, reaching 30% in 2013. This is presumably a result of states trying to solve their problems with prison overcrowding. The combination of pressure to release inmates and an increase in the use of discretionary parole seem to have gone hand in hand in recent years.

California is perhaps the perfect example. In May of 2011, the Supreme Court, in *Brown v. Plata*, ordered the state to reduce its in-state prison population by about 30,000 prisoners.

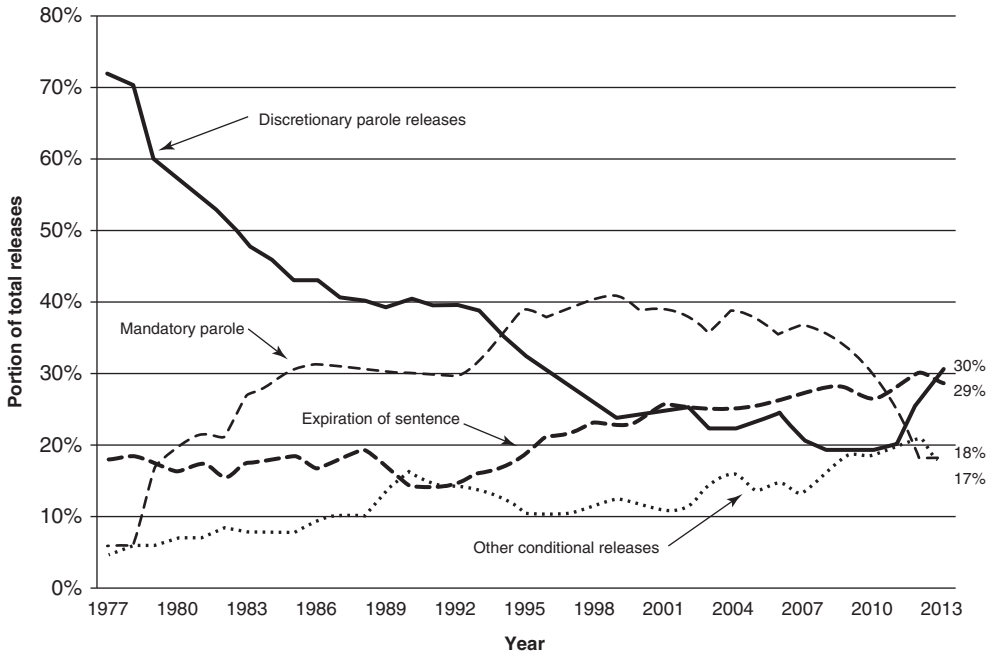

Figure 1 Method of release from US state prisons, 1977–2013.
Source: Created using data from Bureau of Justice Statistics Annual Probation and Parole Surveys.

Since the ruling, the California Board of Parole Hearings (BPH) (the state's parole board responsible solely for the release of inmates sentenced to life with the possibility of parole) has begun to recommend parole more frequently, releasing 670 and 590 inmates serving life terms with the possibility of parole in 2012 and 2013, respectively. These figures represent the two highest annual totals in the history of the BPH, dating back to 1978.

This trend makes sense. In trying to downsize prison populations, it is easier to release eligible inmates through discretionary parole than it is to change sentencing laws or the behavior of other actors in the criminal justice system such as police, judges, or prosecutors. Additionally, as states decrease their prison populations, the least serious inmates are targeted for early release. A parole board, even one with limited jurisdiction such as in California, can be used to identify inmates who are older, have served a minimum portion of a life sentence, and have a lower predicted risk of recidivism. Such inmates are ideal candidates for release, as they represent high costs due to health care expenses and lengthy sentences, and incarcerating them creates minimal incapacitation benefits, due to age and lower recidivism risks.

The significant decline in the number of inmates released discretionarily over the last three decades or so has had important practical implications since, over time, a growing number of inmates have been automatically released through the mechanisms of mandatory parole and expiration of sentences, after they have served a predetermined number of months. The recent resurgence in discretionary parole has only marginally impacted this phenomenon.

Mandatory parole – from 1995 to 2010 responsible for more inmate releases than discretionary parole – is mostly a matter of book keeping to calculate the amount of time served plus good time, which is then subtracted from the total sentence imposed. When the inmate has served the required number of months, he is automatically released, conditionally, to parole supervision for the rest of his sentence. Parole supervision generally lasts one to three years, but can last much longer in some states (e.g., Texas parole terms are often five to seven years). Mandatory parole is used by federal jurisdictions and states with determinate sentences and parole guidelines.

Figure 1 also shows a significant increase in the number of prisoners released unconditionally. In 2013, 29% of prisoners – nearly one in three – were released unconditionally, leaving them without any parole supervision or reporting requirements. Much of this increase is due to more inmates being released because their sentences have expired, which inmates often call "maxing out." This refers to prisoners who have been incarcerated until the end of their legally imposed sentence; they cannot be returned to prison for the current offense. These prisoners can be some of the most serious inmates, as they may not have gained "good time" in states that grant it, or have not been granted early parole in states that utilize discretionary parole boards. A recent report by the Pew Charitable Trusts (2014) indicates that, from 1990 to 2012, the proportion of inmates who maxed out over this time period increased from 14% to 22%. Some of the most dangerous offenders, it seems, are being released without any post-prison services or supervision.

And perhaps as concerning, the most high-risk paroles are the least likely to successfully complete their terms of parole. As Solomon (2006) points out, this should raise concerns that such offenders are not receiving the appropriate level of services. She recommends that services be concentrated in high-risk areas: neighborhoods with large parolee populations and high crime rates. Furthermore, she contends that services should be concentrated in the first days and weeks following an inmate's release, which is the period when a parolee is most likely to recidivate. It seems that currently the two groups who need the most help – some of those who max out and the most at-risk parolees – are either not getting any services or are not getting the level and types of services they need. The implications of the changes in the way inmates are returned to the free community unfortunately have largely gone unnoticed and undebated by the public.

Discretionary Parole Associated with Longer Prison Terms and Higher Success Rates

One of the presumed effects of eliminating parole or limiting its use is to increase the amount of time inmates spend in prison. After all, parole boards are often criticized for letting inmates out early. The length of time served in prison has increased markedly over the last two decades, according to a study by the Pew Foundation. Prisoners released in 2009 served an average of nine additional months in custody, or 36% longer, than offenders released in 1990. Bureau of Justice Statistics (BJS) figures show that among all state inmates released from prison, for their first time on their current offense, the average time served in prison increased from 22 months in 1990 to 30 months in 2009.

At first glance, these longer prison terms might be seen as evidence that abolishing parole boards has resulted in keeping inmates behind bars longer, one goal of parole opponents. That interpretation, however, is incorrect. Analyses published by the Bureau of Justice Statistics (Hughes et al. 2001) reveal a relationship between type of release (mandatory versus discretionary) and the length of time spent in prison prior to release. Contrary to expectations, length of time served in prison is greater in states having discretionary parole. For violent offenses, men served 60 months prior to discretionary release compared to 48 months among men who received a mandatory sentence with automatic parole. Similar trends were found for women: for violent offenses, women served 45 months prior to discretionary release, compared to 36 months for women who received automatic parole. For all offense types combined, the mean total time served in prison for those released from state prison for first releases in 1999 through "discretionary" parole methods was 35 months; for those released mandatorily, the average time served in prison was 33 months.

Analysis by Stivers-Ireland and Prause (2005) confirmed that discretionary parole was associated with longer prison terms served, even when offense, prior record, age, gender, and conviction crime type were statistically controlled. Importantly, their analysis also found that for almost every offense, especially violent crimes, those released discretionarily served longer prison terms and were about twice as likely to successfully complete parole supervision than those released mandatorily.

The higher success rates among inmates released discretionarily may be interpreted in two ways. It is possible those released via

discretionary parole are less serious offenders, and hence are released early in states with discretionary parole systems. Or, it may mean that having to earn and demonstrate readiness for release and being supervised post-prison have some benefits regarding deterrence and rehabilitation.

The second interpretation seems to have merit, especially given that inmates released through discretionary parole are often the most serious offenders, such as the Lifers in California. Advocates of parole argue that discretionary release ultimately leads to greater public safety, since it encourages both inmates and prison officials to focus more heavily on reintegration programs. For instance, members of the California Board of Parole Hearings (BPH) meet with inmates serving life with the possibility of parole several years before their first parole hearing in order to discuss with them the importance of developing parole plans. A discretionary parole system incentivizes inmates to form such plans, under the belief that doing so is necessary to be released.

Michael Santos (2012), who spent 26 years in federal prison, notes the negative effects of determinate sentencing: "Because the new determinate sentencing scheme [the Comprehensive Crime Control Act of 1984] *decimated hope* for release, prisoners found empowerment in criminal associations and began creating new networks inside." As Mr. Santos articulates, inmates who have no hope of being released, or know the exact date upon which they will be released, have no incentive to rehabilitate. From their perspective, pursuing rehabilitation will not be helpful, especially given the benefits that may accrue to them within the social hierarchy of the prison by engaging in behavior that is illegal or otherwise violates the rules of the institution. Further research on the effects of discretionary versus mandatory parole release should be given highest priority.

Parole Guidelines and Risk Prediction Instruments

Release practices have changed dramatically even in the 16 states that still authorize parole authorities to use their discretion to release inmates. In those states, the sentencing reform movement produced a significant diminution of parole boards' discretionary authority. Mandatory minimum-sentencing policies now exist in every state, and the federal government and 27 states have enacted "Three Strikes and You're Out" laws that require extremely long minimum terms for certain repeat offenders. These different sentencing regimes removed discretion from the dispositional stage of the sentencing process. Offender-based systems were replaced with offense-based systems.

Perhaps most significantly, 27 states and the District of Columbia have established "truth-in-sentencing" laws, under which people convicted of selected violent crimes must serve at least 85% of the announced prison sentence. To satisfy the 85% test (to qualify for federal funds for prison construction), states have limited the powers of parole boards to set release dates and of prison managers to award "good time" and "gain time" (time off for good behavior or for participation in work or treatment programs). As a result, violent offenders' post-release oversight time has decreased to 15% of the imposed sentence (Travis et al. 2001).

Nearly all of these states have further restricted parole by setting specific standards offenders must meet to be eligible for release, and most of them now use formal risk prediction instruments or parole guidelines to structure the parole decision-making process. Since the 1970s, corrections has developed many different risk assessment instruments and parole guidelines in an attempt to make parole release decisions more rational and accurate in terms of recidivism prediction.

Parole guidelines are usually actuarial devices, which objectively predict the risk of recidivism based on crime and offender background information. The guidelines produce a "seriousness" score for each individual by summing points assigned for various background characteristics (higher scores mean greater risk). An inmate with the least serious crime and the lowest statistical probability of reoffending would then be the first to be released and so forth.

Many guidelines were originally based on the US Parole Commission's salient factor score (SFS), which has been in use since 1981. The salient factors are: (1) number of prior convictions/adjudications, (2) number of prior commitments

of more than 30 days, (3) age at current offense, (4) recent commitment-free period (three years), (5) probation/parole/confinement/escape violation at time of current offense or during present confinement, (6) heroin/opiate dependence, and (7) the inmate's current age.

The SFS places the offender in one of four risk categories: very good, good, fair, or poor. Parole officials consider this score in deciding whether parole is to be granted and, if so, what level of supervision will be required. Initial studies showed that the SFS was reliable in differentiating the higher risk offenders from the lower risk ones, and predicted recidivism more accurately than subjective methods. This early success led to the development of more advanced risk assessment tools, and over 80% of parole officials in the United States use risk assessment instruments (Center for Research on Youth and Social Policy 2008).

The most popular and respected of the newer risk assessment instruments is the Level of Service Inventory-Revised (LSI-R). Unlike parole guidelines, this risk assessment procedure was not originally designed to assist in parole release decision-making, but rather to make effective treatment program decisions after release. It is now being used to do both.

More generic parole guidelines primarily measure static, criminal history items, and provide little information on criminogenic needs. Researchers have called attention to more dynamic factors or criminogenic needs that should be targeted by treatment providers, and have urged that these items be included in the next generation of risk assessment instruments. This LSI-R scale, however, includes both criminal history items and measures of such offender needs as substance abuse, employment, and special need accommodations. The tool has been proven to be both reliable and valid. The LSI-R is administered during a standardized one-hour semi-structured interview, and it objectively evaluates predictors of program success (such as residence, family ties, employment) as well as predictors of program failure (such as prior convictions, prior failures to appear, drug use, prior violations of their sentence). It includes 54 items ranging from static, criminal history variables to more dynamic items, such as the offender's present employment and financial situation. Scoring of the instrument follows the Burgess zero to one method where the presence of a risk factor is scored as one. Scores are then added to give a total risk-needs score. The LSI can be further analyzed into its subcomponents, many of which reflect dynamic aspects of the offender's situation (e.g., living accommodations). High scores on the subcomponents suggest criminogenic needs or areas to target for intervention.

Results of the LSI-R provide the parole officer and supervisor a numeric estimate of each client's risk and needs, making it possible to assign clients to appropriate services (i.e., substance abuse, cognitive restructuring, anger management, life skills). Because many of the risk and needs factors are dynamic, the LSI-R can be given repeatedly over time to reflect positive and negative changes in the areas being measured. The LSI-R is being used in the more progressive corrections departments to identify treatment goals for staff who counsel offenders, run treatment programs, and in general attempt to reduce the risk of future criminal behavior.

The concern with risk assessment instruments, however, is that using them effectively requires validating the risk factors, revising the weights, and updating minimum time served calculations. An instrument developed in one state for the offender population particular to that area will not be as effective in predicting the risk of inmates in a different state. In North Dakota, for instance, there is not a strong correlation between gang activity and recidivism. A risk instrument developed for use there would not be effective if used to assess offenders in Los Angeles. The tools, while potentially quite effective, must be understood and used properly.

SEE ALSO: Maconochie, Captain Alexander; Parole; Probation

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